

**Opening Statement of the Honorable John Shimkus**  
**Subcommittee on Environment and the Economy**  
**Hearing on “EPA’s 2014 Final Rule: Disposal of Coal Combustion Residuals from Electric Utilities”**  
**January 22, 2015**

*(As Prepared for Delivery)*

We welcome each of our witnesses and appreciate your willingness to be here today to talk about the final coal ash rule released by EPA in December. We are eager to hear from the Administration and we hope that Mr. Stanislaus will be able to provide some clarification about the implementation of the final rule and also answer some questions and address some concerns. We will hear from a number of stakeholders regarding their initial impressions of the final rule and any concerns they may have and we will also discuss the final rule in comparison to the legislation considered by the Committee in the last two Congresses.

First, I would like to commend EPA for getting the final rule out in time to meet the court-ordered deadline – weighing in at over 700 pages, I am sure that was no small undertaking. I would also like to acknowledge that in finalizing the rule the Agency faced a genuine dilemma: create an enforceable permit program for coal ash under Subtitle C and designate coal ash as a hazardous waste, or promulgate self-implementing standards for managing coal ash as a non-hazardous waste under Subtitle D. I am pleased to note that EPA chose to regulate coal ash under Subtitle D which will help ensure that coal ash continues to be beneficially reused. However, because of the way Subtitle D is currently drafted, EPA did not have the authority it needed to create a permit program for coal ash. Instead, the final rule lays out an entirely self-implementing program that will be enforced through citizen suits and will unavoidably lead to an unpredictable array of regulatory interpretations, as judges throughout the country are forced to make extremely technical compliance decisions that would be better left to a regulatory agency.

The final rule also sets up a dual regulatory program. EPA “strongly encourages” the States to incorporate the requirements into their solid waste management plans. However, as currently drafted, RCRA does not allow State coal ash programs to operate in lieu of the federal requirements in the final rule. Meaning, even if States adopt the federal requirements or requirements that are more stringent, the Federal requirements remain in place and utilities must comply with both the State and Federal requirements.

There are some other provisions in the final rule that are potentially troublesome and that we hope to discuss today, including the retroactive application of location or siting restrictions and the requirement that unlined impoundments that exceed a groundwater protection standard close with no opportunity to remedy the problem through corrective action.

Last but not least, EPA has removed the flexibility of the corrective action program as it exists for other programs under Subtitle D. It is understandable that the Agency may feel the need to tighten certain restrictions because the rule is self-implementing. However, by removing flexibility regarding the boundary within which compliance must be demonstrated and flexibility to determine the appropriate cleanup levels, and eliminating cost as a factor that can be considered in completing corrective action – the final rule jeopardizes the future of risk-based cleanup decisions at coal ash disposal units. The removal of this flexibility also creates uncertainty with respect to ongoing cleanups at coal ash disposal facilities.

While we acknowledge the amount of time and effort EPA put into drafting the final rule, because of the significant limitations of the rule we still believe that a legislative solution that sets out minimum federal requirements and allows the States to develop enforceable permit programs to implement the standards, is the best approach to dealing with the regulation of coal ash. I can assure you that we intend to be

thoughtful with respect to the requirements in the final rule and how they differ from the legislation that we moved through this Committee and the House during the last Congress and we will update the legislation as necessary. As Mr. Stanislaus pointed out when he spoke with us last time, there are some important issues that our previous bills did not address – in particular, regulation of inactive impoundments – we will address these units as we move forward.

I would like to thank the Administration for all of the cooperation we have received to date on this issue. EPA has been constructive and helpful both with our legislative efforts during the last Congress and recently as we work through the issues with the final rule. We appreciate all of our witnesses for being here, I would like to thank Mr. McKinley for his continued leadership on this issue, and I would like to express my appreciation to my fellow Committee members for sticking with us as we continue to push forward to ensure the effective regulation of coal ash.

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